

of the Statute is explained in these respects in the notes to *Duppa v. Mayo*. But to justify breaking and entering, &c. under a proviso for re-entry, &c., a due demand of the rent seems still necessary, as the right of entry accrues only upon demand, though a plea omitting it might perhaps be good under this Statute, if so pleaded, *Hill v. Kempshall*, 7 C. B. 975. As to an express stipulation by the lessor for a right of re-entry without demand, see *Kavanagh v. Gudge*, 7 Man. & G. 316. But if the condition be that he may enter within a certain time and the time elapses without entry, it is taken away, *Hill v. Kempshall supra*. As to a condition that if the rent is in arrear the lessor may enter without bringing an ejectment, and the demand necessary thereunder, see *Acocks v. Phillips*, 5 Hurl. & N. 182.

In England an affidavit as to the method of service of the declaration is required. But as long ago as May term 1716 of the Provincial Court, a rule was passed that all returns in ejectment by the Sheriff without oath should be received as good proof of service, 1 H. & McH. 33; see Act of 1870, ch. 420.¹¹

It would appear that in Baltimore, at least, there need now never be a nonsuit of the plaintiff, on account of the defendant's not confessing lease, entry and ouster. The 28th rule of Baltimore County Court provided that no person should be admitted as a defendant in ejectment but upon the usual terms of confessing lease, &c., which confession should be entered on the docket, and the defendant should immediately plead not guilty. On which, in a case of *Bowly's heirs v. Deady's heirs* to June 1829 of the

year "the same being first lawfully demanded" and it was held to confer a right to re-enter within the meaning of the Statute, which would support an action of ejectment without a previous demand of the rent.

In *Abrahams v. Tappe*, 60 Md. 317, the assignee of a ninety-nine year lease mortgaged the property and then abandoned it. The lessor, ignorant of the assignment and of the mortgage, brought ejectment against the original lessee for non-payment of rent, recovered judgment by default and took possession under a writ of *habere facias possessionem*, holding for over a year. The mortgagee then commenced foreclosure proceedings and was restrained by injunction on a bill filed for that purpose by the lessor. The court said that the assignee and the mortgagee took the term subject to all its conditions and covenants and that their failure to pay the rent was equally a default in them as in the original lessee; that the actual re-entry by the lessor following her perfected right to re-enter worked a forfeiture of the lease; and that whatever technical error there might have been in making the original lessee defendant in the ejectment was immaterial. So in *Link v. MacNabb*, 111 Md. 641, where the term was vested in a tenant for life with remainder over, it was held that the omission to make some of the remaindermen parties to an ejectment by the landlord was immaterial where the judgment in ejectment was followed by re-entry of the landlord; and also that the operation of such judgment was not affected by the fact that the deed conveying the reversion to the landlord, although executed before, was not recorded until after the ejectment suit.

¹¹ Code 1911, Art. 75, sec. 71. See note 17 to 11 Geo. 2, c. 19.